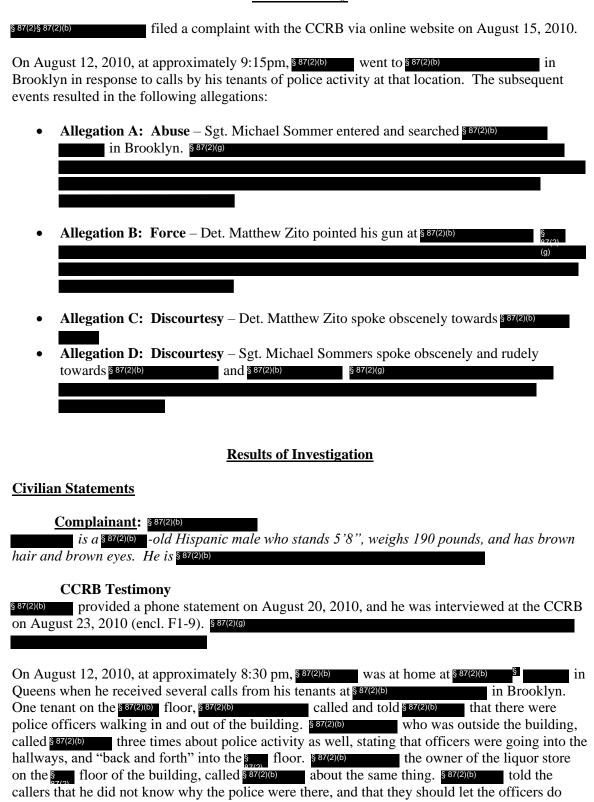
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	\square	Force	\checkmark	Discourt.	☐ U.S.
Alexander Lai		Team # 1	201011291	Ø	Abuse		O.L.	☐ Injury
In aid and Data(a)		I anding of Incident				10	M- COL	EO COL
Incident Date(s)		Location of Incident:		P	recinct:		Mo. SOL	EO SOL
Thursday, 08/12/2010 9:15 PM		§ 87(2)(b)			83	2/	/12/2012	2/12/2012
Date/Time CV Reported		CV Reported At:	How CV Reported:	:	Date/Time	Rece	eived at CC	RB
Sun, 08/15/2010 5:44 PM		CCRB	On-line website	Sun, 08/15/2010 5:45 PM				
Complainant/Victim	Type	Home Addre	ess					
Witness(es)		Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. DT3 Matthew Zito	29792	937792	NARCBBN					
2. SGT William Sommer	02586	927538	NARCBBN					
Officer(s)	Allegatio	on			Inve	stiga	ator Recor	nmendation
A.SGT William Sommer	Abuse: S § 87(2)(b)	Abuse: Sgt. William Sommer entered and searched in Brooklyn.						
B.DT3 Matthew Zito	Force: Det. Matthew Zito pointed his gun at § 87(2)(b)							
C.DT3 Matthew Zito	Discourte	esy: Det. Matthew Zito	spoke rudely to § 87(2)	(b)				

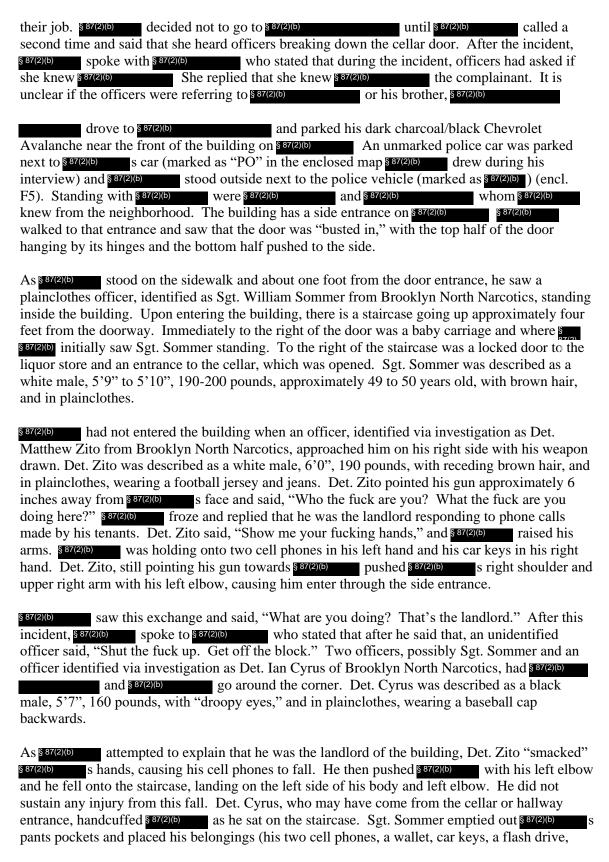
Discourtesy: Sgt. William Sommer spoke obscenely and rudely to \$87(2)(b) and \$87(2)(b)

D.SGT William Sommer

Case Summary



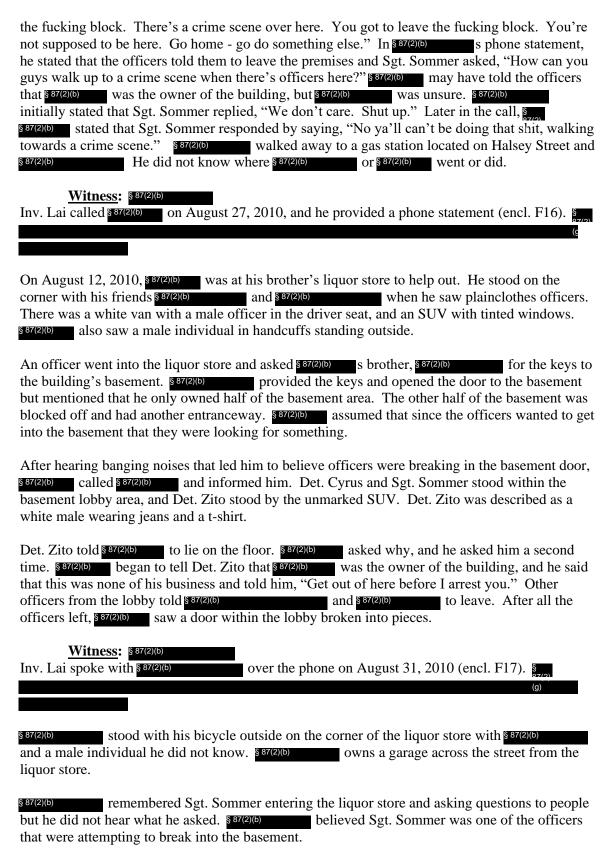
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you come here? You should've stayed at your house." §87(2)(b) replied that he was the landlord and came because he heard that police were breaking down the cellar door. He did not know why he was handcuffed, and the officers never told him why. When he asked why he was being arrested, Sgt. Sommer replied, "Because you're stupid." Victim: § 87(2)(b) is a 🖫 87(2)(b) -old Hispanic male who stands 6'0", weighs 197 pounds, and has black hair and brown eyes. § 87(2)(b) **CCRB Testimony** provided a phone statement on August 27, 2010, and an in-person statement at the CCRB on September 2, 2010 (encl. F10-15). §87(2)(g) On August 12, 2010, § 87(2)(b) along with \$87(2)(b) who was identified via investigation as § 87(2)(b) and § 87(2)(b) stood on the corner of \$87(2)(b) in front of a liquor store. On a drawing created by §87(2)(b) interview, \$87(2)(b) was marked as '\$87(2) while \$87(2)(b) and § 87(2)(b) were marked as and 's respectively (encl. F13). An unmarked grey or blue jeep was parked between the side entrance of § 87(2)(b) and the liquor store, marked as "P car" in §87(2)(b) drawing. A grey police van was parked at the dead end of \$87(2)(5) marked as "PO V." There were approximately six plainclothes officers standing in front of the side entrance, walking inside and outside the building. A person had exited the side entrance and the officers held the door open. Sgt. William Sommer, one of the officers walking around, was described as a white male, 6'1", average build, in his 30s, with spiked blonde hair, and wore a blue jersey and jeans. Det. Matthew Zito, who stood outside in front of the jeep, was described as a white male, 6'1", average build, in his 30s, had short black hair, and wore a black shirt and jeans. Det. Ian Cyrus, who was inside the van, was described as a black male, 5'6 to 5'7", and stocky. heard a loud banging sound emanating from the side entrance, which led to his believing that the officers were attempting to break open a door inside the building, although he did not see this occur. Approximately an hour after officers had initially arrived at the location, and 15-20 minutes after the officers were banging on a building door, \$37(2)(b) arrived. \$37(2)(b) did not see what happened to \$87(2)(b) after he was pushed because he still stood at the sidewalk corner s 87(2)(b) meanwhile, had walked around and stood across the street, with § 87(2)(b) marked by an asterisk and an 's on § 87(2)(b) s drawing. §87(2)(b) said to Det. Zito that was the landlord, but Det. Zito replied that he did not care. In §87(2)(b) and § 87(2)(b) statement, he stated that when Det. Zito pushed § 87(2)(6) remained standing with him on the liquor store corner. After Det. Zito pushed (\$397(2)(5)) Cyrus exited from his van and ran into the side entrance. From the time that \$87(2)(b) and Det. Zito pushing him, one minute had elapsed. Sgt. Sommer exited from the side entrance and walked towards \$87(2)(b) and \$87(2)(b) and said, "Police officers here - can you please leave the fucking block? Leave the block. Leave

cash, and various papers) into a large envelope. \$87(2)(b) denied that officers retrieved any other items from his person. Sgt. Sommer said to \$87(2)(b) "You're stupid. Why the fuck did

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Det. Zito told \$87(2)(b) to "get on the ground," and \$87(2)(b) asked why and that he was checking his building. Det. Zito told him to "get on the fucking ground." \$87(2)(b) and \$87(2)(b) who were still standing by the liquor store corner approximately 10 feet away, said to Det. Zito that \$87(2)(b) was the landlord. Sgt. Sommer exited from the same entrance and told \$37(2)(b) and \$87(2)(b) to leave because they were "interfering with police investigation."
Other Civilian Statements A statement from \$87(2)(b) was not obtained. Civilian statements have shown that \$87(2)(b) was at the location with \$87(2)(b) and \$87(2)(b) instead of \$87(2)(b) Although \$87(2)(b) stated otherwise, all other statements identified \$87(2)(b) as present at the corner of \$87(2)(b) \$87(2)(b) \$87(2)(b) \$87(2)(c) NYPD Statements:
Subject Officer: DET. MATTHEW ZITO Det. Zito is a [87(2)(b)] -old white male who stands 6'2", weighs 230 pounds, and has brown hair and brown eyes. On August 12, 2010, he was on-duty from 2:27pm to 11:00pm, assigned to narcotics enforcement within the confines of the 83 rd Precinct, in plainclothes and in an unmarked vehicle with Sgt. Sommer.
Memo Book On August 12, 2010, at 9:00pm, Det. Zito had one under arrest at \$37(2)(5) At 9:30pm, he had another under arrest at the same location, in the basement apartment. At 9:35pm, Det. Zito had one under arrest at \$37(2)(5) hallway (encl. G4).
Arrest Report & Criminal Court Complaint On August 12, 2010, at approximately 9:30pm, \$87(2)(5) was found in possession of a plastic bag containing approximately two pounds of marijuana. Det. Zito saw the plastic bag coming out of a vent which was in the wall of the basement of \$87(2)(5)
Det. Zito saw Det. Zito identified himself as a police officer to sav(2)(b) and told him that he could not enter because police officers were in the basement. Sav(2)(b) entered the hallway of the building and Det. Zito said a second time that he could not enter. He then pushed Det. Zito and said that he was the owner of the apartment and the building, and attempted to enter the basement. Sav(2)(b) resisted arrest by struggling with police and refusing to be handcuffed.
CCRB Testimony Det. Zito was interviewed at the CCRB on December 1, 2010 (encl. G13-15).
Det. Zito and Sgt. Sommer parked their unmarked SUV approximately 10 feet in front of the side entrance of \$\sigma_{67(2)(6)}\$ on \$\sigma_{67(2)(6)}\$ Det. Zito observed an individual, identified through investigation as \$\sigma_{67(2)(6)}\$ pacing around the vestibule and hallway of the building. He did not see any other individuals around the vicinity. Given that the area was a known drugprone location coupled with \$\sigma_{67(2)(6)}\$ s actions, Det. Zito believed that \$\sigma_{67(2)(6)}\$ was attempting to buy drugs. The officers decided to approach him after observing him for approximately one minute. As Det. Zito and Sgt. Sommer exited and approached, \$\sigma_{67(2)(6)}\$

Page 6 CCRB Case # 201011291 threw marijuana to the hallway ground. Simultaneously, an individual shut the door from inside an apartment where \$87(2)(b) had walked from. Det. Zito immediately arrested \$87(2)(b) In the hallway, he heard noise emanating from the basement apartment door that an individual was inside, moving objects. Det. Zito suspected that evidence was being destroyed and knocked on the door but no one answered.

Sgt. Sommer entered the front entrance of the liquor store next door and asked the store owner if they had access to the basement. While Sgt. Sommer was inside the store, Det. Zito stood outside the hallway vestibule. There were approximately 4-5 officers from Det. Zito's field team that arrived on the scene but he did not recall who was present. The store owner allowed Sgt. Sommer and Det. Zito to enter the store's basement, which was accessed via a sidewalk entrance outside and to the right of the hallway vestibule. Officers who Det. Zito did not recall entered the basement also.

Upon going downstairs, the basement was divided by drywall separating the store from the side where Det. Zito had heard an individual moving objects. Individuals on the other side of the drywall could still be heard during the time the officers entered the store's side of the basement. Det. Zito and Sgt. Sommer went to the back of the basement, and saw a 2x2 foot vent fixed to a wall. A plastic zip-lock bag with marijuana was being thrown through the vent from the other side. The officers realized that the place from which the bag was thrown was the basement apartment. Det. Zito recovered the bag of marijuana.

After approximately 10 minutes, the officers exited the store's basement, and Det. Zito secured the bag of marijuana, which was later vouchered, in their SUV. An officer knocked on the basement apartment door a second time. After no one responded, members of Det. Zito's field team used a Kelly tool, sledgehammer, and ram to open the door. Det. Zito did not recall the officers who opened the door, which took less than a minute to access. Det. Zito remained outside in front of the hallway vestibule as this was done. Upon entering the basement apartment, officers found [87(2)(6)] who was subsequently arrested.

parked his car in front of Det. Zito's unmarked SUV, exited, and ran towards the basement apartment where the field team had entered. Det. Zito, who was standing by the vestibule, followed followed into the hallway and pointed his gun at solvent while saying, "Stop. Police." Det. Zito stated that he pointed his gun towards because who was being "loud and boisterous," ran towards the field team from behind. The store owner stood on the street corner approximately 25 feet away but Det. Zito denied that any person approached or spoke to him at this time. Solvent did not enter the basement apartment but continued to approach the apartment after Det. Zito instructed him to stop. Solvent was "screaming and yelling" statements that Det. Zito did not recall, and Det. Zito attempted to handcuff him in the hallway. Solvent flailed his arms, refusing to be handcuffed, and Det. Zito pushed him to the ground, and an officer from the field team who he did not recall assisted in successfully arresting him after approximately one minute. Before the officers left the scene, the basement apartment door was secured.

Det. Zito denied using profanity and denied hearing any officer use profanity during this incident. Det. Zito denied calling \$87(2)(b) "stupid" and denied using the word "fuck" towards him.

During the interview, Det. Zito was shown video footage taken from the liquor store during the incident. Det. Zito identified Sgt. Sommer in footage taken from "Epis4Cam#3" at the time

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20:35:35. Det. Zito also affirmed in footage taken from "Epis1Cam#8" at 21:35:00 as the point when § 37(2)(b) drove and parked his black car in front of the vestibule and approached the basement apartment. He explained in the same video that an officer standing by an unmarked SUV approached \$37(2)(b) from behind. Det. Zito was unable to determine if this officer was himself or another officer. **Subject Officer: SGT. WILLIAM SOMMER** Sgt. Sommer is a section -old white male who stands 6'0", weighs 190 pounds, and has blonde hair and blue eyes. On August 12, 2010, he was on-duty from 2:25pm to 11:00pm, assigned as a narcotics supervisor with Det. Zito, in plainclothes and in an unmarked grey Mitsubishi Endeavor SUV. Memo Book On August 12, 2010, at 8:20pm, Sgt. Sommer was en route to the corner of [887(2)(b)] At 9:00pm, an individual was under arrest at that location. At 9:30pm, a second individual was under arrest in the basement of \$87(2)(b)

At 9:35pm, a third individual was under arrest in the hallway of § 87(2)(b) (encl. G18). **CCRB** testimony Sgt. Sommer was interviewed at the CCRB on February 1, 2011 (encl. G19-21). §87(2)(9) was arrested, Sgt. Sommer went to the liquor store and spoke to an employee about the building's layout, in case the officers returned for a future investigation. The store employee, who informed him that two individuals lived in the basement of \$87(2)(b) led Sgt. Sommer to the rear of the store, revealing storage and office rooms. When they were led to the liquor store basement via the cellar doors, Det. Lorne Kanover and Det. Michael Separ arrived at the location but Sgt. Sommer did not recall if any additional officers were present or if they accompanied him to the basement, save for Det. Zito. Sgt. Sommer made the decision to enter the basement of §87(2)(b) by using a ram through the wooden door in order to apprehend the individual who threw the marijuana through the vent. Sgt. Sommer was unsure but he believed that he was the officer who used the ram to gain entrance. The door was damaged after the ram was used, but it was secured at the conclusion of this incident. Det. Zito stood outside nearby the vestibule of the building during this time, watching over \$87(2)(b) Sgt. Sommer, along with Det. Kanover and Det. Separ, entered the basement of § 87(2)(b) where they found and arrested § 87(2)(b) After \$37(2)(b) was arrested, Sgt. Sommer heard a "commotion" outside, which sounded like Det. Zito giving verbal commands and an explanation of the situation to an individual, who was not complying. He added that it sounded like Det. Zito was telling the individual to stop from entering the building, but he did not hear any statements made by the individual. Sgt. Sommer

entering the building, but he did not hear any statements made by the individual. Sgt. Sommer exited the basement and saw \$87(2)(b) in handcuffs, accompanied by Det. Zito within the building lobby. Sgt. Sommer did not recall if \$87(2)(b) was lying on the ground or standing when he first saw him. He also did not recall seeing any visible injuries on \$87(2)(b) and did not recall hearing him complain of any injuries. Det. Zito explained that he tried to tell \$87(2)(b) that he was not allowed into the building because there was an ongoing police investigation, but \$87(2)(b) did not listen and attempted to get past him.

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Approximately five to six civilians standing nearby the liquor store approached closer to Sgt. Sommer's vehicle as Det. Zito was securing the recovered marijuana. Sgt. Sommer approached them and told them to get away from the truck and to step back, asking them for a minute before he could explain the situation after everything was under control. The civilians complied and walked back to the liquor store; Sgt. Sommer did not recall statements they made towards him. He did not recall using profanity or the word "fuck" towards the civilians.

NYPD Documents

Command Log

The 83rd Precinct's command log shows that on August 12, 2010, at 10:25pm, Det. Zito brought in \$87(2)(b) and \$87(2)(b) (encl. H1-2).

Property Voucher

Voucher \$37(2)(b) as forfeiture evidence "as it is believed to be proceeds of narcotics transactions." A piece of mail with \$37(2)(b) as name and a plastic piece of an item that is illegible were also vouchered as arrest evidence, according to voucher \$37(2)(b) Finally, referencing voucher \$37(2)(b) two cell phones, one cell phone case, one black thumb drive, and three keys on a keyring belonging to \$37(2)(b) were vouchered for safe keeping. \$37(2)(b) s wallet, papers, and two credit cards were returned to him (encl. H3-6).

Other Evidence

Video recordings of the incident date were acquired from the liquor store at \$87(2)(b)

It does not show any FADOs.

Arrest for Incident and Disposition

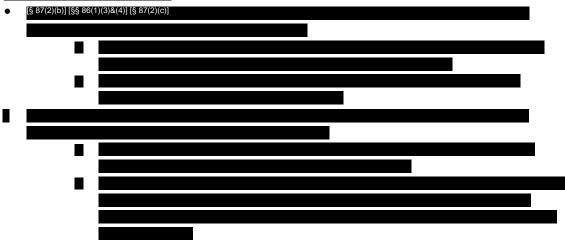
[\$ 87(2)(b)] [\$\$ 86(1)(3)&(4)] [\$ 87(2)(c)]

BADS indicated that as of February 16, 2011, \$87(2)(c) s arrest report was sealed.

Status of Civil Proceedings

has filed a Notice of Claim with the City of New York and the New York City Police Department as of March 28, 2011, with regard to the incident (encl. I16-18). The claim is for "personal, physical, and emotional injuries sustained by [57(2)(5) 57

Civilians Criminal History



Civilians CCRB History

- \$87(2)(b) has filed the following CCRB complaint: \$87(2)(b)
- This is the first CCRB complaint filed by \$87(2)(b) (encl. B2).

Subject Officers CCRB History

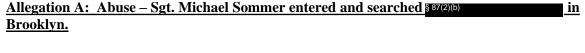
- Sgt. Sommer has been a member of the service for ten years and there are three substantiated CCRB allegations against him (encl. A1-2).
- Det. Zito has been a member of the service for six years and there are three substantiated CCRB allegations against him (encl. A3-4).

Conclusion

Identification of Subject Officers

Det. Zito affirmed interacting with \$87(2)(b) during this incident. Sgt. Sommer was identified by a combination of physical descriptions and actions attributed to him as described by civilian statements.

Investigative Findings and Recommendations



It is undisputed that Sgt. Sommer, under his authority, entered the basement of \$87(2)(b) along with other members of his field team. \$87(2)(b) the only occupant in the basement, was arrested, and quantities of marijuana were recovered.

The police are allowed to prevent the potential destruction or removal of evidence where they do not have the time to obtain a warrant, pursuant to the exigency theory. Several factors are considered with such cases. One such factor is the nature and degree of urgency involved and the amount of time needed to obtain a warrant. People v. Rivera, 574 N.Y.S.2d 81 (3rd Dep't 1991). A reasonable belief that the contraband is about to be removed is also another factor considered. People v. Lewis, 462 N.Y.S.2d 884 (1st Dep't 1983). Additionally, information indicating that

Page 10 CCRB Case # 201011291 the possessors of the contraband are aware that the police are on their trail is considered. <u>People v. Thomas</u>, 514 N.Y.S.2d 817 (3rd Dep't 1987). These factors are considered entirely, and the existence of just one of these factors does not constitute exigent circumstances. <u>People v. Kross</u>, 580 N.Y.S.2d 269 (N.Y. Crim. Ct. 1992).

According to police statements, as \$37(2)(b) was arrested near the vestibule of \$37(2) an individual shut the door from inside the basement apartment where \$3.50 had walked from. Det. Zito heard noise emanating from the basement apartment door that an individual was inside, moving objects. He suspected that evidence was being destroyed and knocked on the door but no one answered. Sgt. Sommer stated that he wanted to find out if the marijuana recovered from \$37(2)(b) was bought by a person within the building, and began a canvass. A liquor store employee led the officers to the store's basement, which was shared by the basement apartment, but divided by a wall. While in the basement, the officers saw a bag of marijuana being pushed out through an opening of a wall from the basement apartment into the liquor store side. Sgt. Sommer also heard movement emanating on the other side and he believed that an individual may have been trying to tamper with or destroy evidence, or attempting to flee. He made the decision to enter the basement apartment by using a ram through the wooden door in order to apprehend the individual who threw the marijuana through the vent.

§ 87(2)(g)
If Det. Zito's account of the incident is referenced, \$87(2)(b)
(hereinafter § 87(2)(b) immediately shut the basement apartment door as the officers apprehended
knew that police were present at his doorstep, but knocks to the basement
door went unanswered. §87(2)(g)
§ 87(2)(g)

Allegation B: Force – Det. Matthew Zito pointed his gun at § 87(2)(6)

Det. Zito affirmed drawing and pointing his firearm towards [\$87(2)(b)] as he approached the side entrance of \$87(2)(b)

The Police Department permits an officer to draw his firearm and point it at another person if the officer has a reasonable fear for his own or another's safety. <u>Police Department v. Gliner</u>, OATH Index No. 955/00 (Sept. 6, 2000) The totality of circumstances is considered in assessing the reasonableness of the officer's actions. *Id*.

§ 87(2)(g)

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§ 87(2)(g)			
Allegation C: Discourtesy – Det Allegation D: Discourtesy – Sgt \$87(2)(b) and \$87(2)(b)			
stated that Det. Zito sathere?" and told him to "show [his that he was "stupid" and asked, "V Sommer said, "Police officers here instance, \$87(2)(5) mentioned towards a crime scene."	fucking hands." \$87(2) Why the fuck did you ce - can you please leav	also stated that Sg come here?" \$87(2)(b) e the fucking block?" In	t. Sommer said stated that Sgt. another
		age was used during this	
Det. Zito and Sgt. Sommer denied	making those obscene	e and rude remarks. § 87(2)(9	g)
Team:			
		:	
Investigator: Signature	Print	Date	
C	Timt	Date	
Supervisor:	Print		
<u> </u>	Time	Bute	
Reviewer:Title/Signature	Print	Date	
Reviewer:			
Title/Signature	Print	Date	

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